IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7592 OF 2004

AND

WRIT PETITION NO. 7597 OF 2004

1. Abdul Rahim B. Attar
   Age 67 years, Occ. Ex. BMC Engineer

2. Javed Abdul Rahim Attar
   Age 30 years, Occ. Business

3. Zakir Hussein Abdul Rahim Attar
   Age 36 years, Occ. Business

4. Maroof Abdul Rahim Attar
   Age 35 years, Occ. Business

All Residing at Building No.1,
B-Wing 2nd Floor, Flat No.21,
Bustaan Apartments,
271, Bellasis Road,
Mumbai - 400 008. .. Petitioners

Versus

1. Atul Ambalal Barot
   Age 53, Occ. Business

2. Rajendra Ambalal Barot
   Age 51, Occ. Business

Heirs & Legal Representatives of
late Smt. Shantaben Ambalal Barot,
resding at "Ashirwad" B-22,
Kapole Co-operative Housing Society
Ltd., V.M. Road, Near Centaur Hotel,
Juhu, Mumbai - 400 049.

OR

Having office address at 101,
1st Floor and 601, 6th Floor,
Shree Amba Shanti Chambers,
Opp. Hotel Leela, Andheri-Kurla Road,
Andheri (East), Mumbai - 400 059. .. Respondents

WITH

WRIT PETITION NO. 7614 OF 2004

1. Abdul Rahim B. Attar
   Age 67 years, Occ. Ex. BMC Engineer

2. Javed Abdul Rahim Attar
   Age 30 years, Occ. Business

3. Zakir Hussein Abdul Rahim Attar
   Age 36 years, Occ. Business

4. Maroof Abdul Rahim Attar
   Age 35 years, Occ. Business

All Residing at Building No.1,
B-Wing 2nd Floor, Flat No.21,
Bustaan Apartments,
271, Bellasis Road,
Mumbai - 400 008. .. Petitioners

Versus

Rustom Savaksha
Age 73 years, Occ. Retired Engineer,
Flat No.1, 4th Floor, Shirin Mansion,
56/64, Nausher Bharucha Marg &
1/9, Shanker Seth Lane,
Opp. Grant Road Railway Station (West),
Mumbai - 400 007. .. Respondents

WITH

WRIT PETITION NO. 7615 OF 2004

AND

WRIT PETITION NO. 7632 OF 2004

1. Abdul Rahim B. Attar
   Age 67 years, Occ. Ex. BMC Engineer

2. Javed Abdul Rahim Attar
   Age 30 years, Occ. Business

3. Zakir Hussein Abdul Rahim Attar
   Age 36 years, Occ. Business

4. Maroof Abdul Rahim Attar
   Age 35 years, Occ. Business

All Residing at Building No.1,
B-Wing 2nd Floor, Flat No.21,
Bustaan Apartments,
271, Bellasis Road,
Mumbai - 400 008. .. Petitioners

Versus

1. Ambalal Prahladji Barot (Since deceased)
2. Atul Ambalal Barot
   Age 53, Occ. Business

3. Rajendra Ambalal Barot
   Age 51, Occ. Business

Heirs & Legal Representatives of
late Smt. Shantaben Ambalal Barot,
resding at "Ashirwad" B-22,
Kapole Co-operative Housing Society
Ltd., V.M. Road, Near Centaur Hotel,
Juhu, Mumbai - 400 049.

4. Rekhaben Atulbhai Barot
   Age 49, Occ. Housewife
   Residing at "Ashirwad",
   B-22, Kapole Co-operative Housing
   Society Ltd., V.M. Road,
   Near Centaur Hotel, Juhu,
   Mumbai - 400 049.

5. Naresh Kumar Ramlal Barot
   Age 53, Occ. Business
   Residing at Atul Niwas, 3rd Floor,
   Khetwadi, 7th Lane,
   Mumbai - 400 004.

6. Vasudeo Prahladji Barot
   Age 63, Occ. Business
   Residing at Bhagat Apartment,
   Kerala Nagar, Tagore Road,
   Santacruz (W), Mumbai - 400 054.

7. Smt. Jayaben Himmatlal Barot
   Age 59, Occ. Business
   Residing at 2nd Floor,
   D-1/11, Bharat Nagar, Grant Road,
   Bombay - 400 007. .. Respondents

Mr.A.S. Rao for the petitioners.

Mr.Jagdish Chodankar for the respondents.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 18TH OCTOBER 2004

ORAL JUDGMENT :

1. Since common questions of law and facts arise in all these petitions, they were heard together and are being disposed of by this common judgment.

2. Rule. By consent, rule is made returnable forthwith.

3. The petitioners challenge the concurrent orders passed by the courts below staying the suits filed by the petitioners for the eviction of the respondents on different grounds available under the Rent Legislation in force in the State. The Trial Court, while allowing the application for stay of the suit filed by the respondents, has passed the impugned order in exercise of powers under section 151 of Civil Procedure Code observing that though there is no case for grant of stay in exercise of powers under section 10 of C.P.C. since the respondents have already filed an application for formation of a cooperative society and for acquisition of the property under the Maharashtra Housing and Area

Development Act ("MHAD Act" for short), the ends of justice would require stay of the suits. The Revisional Court has confirmed the said order on the same ground further holding that the discretion decided by the Trial Court does not warrant interference.

4. There is no dispute between the parties that the provisions of section 10 of C.P.C. are not attracted in the case in hand. However, it is the case of the respondents that they have already proposed to form a cooperative society of the occupiers of the building and have also moved the concerned authority under the MHAD Act requesting to take appropriate steps in the matter, and in case any decree is passed in the suit, it may prejudice the rights of the occupiers / defendants in the suit and, therefore, no fault can be found with the impugned order which has been passed by the courts below in exercise of powers under section 151 of C.P.C. in order to meet the ends of justice.

5. The learned counsel for the petitioners, while placing reliance on the decisions in the matter of Aminchand Pyarelal v. Union of India, 1976 (79) BLR 1 and in the matter of Minocher Behramji v. Hema N. Dadachanji, AIR 1982 Bombay 151, submitted that when there is a special provision in the Code dealing with the contingencies pertaining to the requirement of stay

of the suits, resort to the inherent powers under section 151 of C.P.C. cannot be justified. According to him, section 10 deals with the powers of the court relating to stay of the suits. He submitted that when there is no case made out within the parameters of the provisions of section 10, the courts below could not have exercised the powers under section 151 of C.P.C. to stay the suits. It is his further case that the stay granted by the courts below has resulted in great prejudice to the petitioners.

6. The learned counsel for the respondents, on the other hand, has drawn my attention to the interim order passed by the Apex Court in the petition challenging the provisions of MHAD Act. The said order is to the effect that till the disposal of the petition before the Apex Court, the authorities should not pass any final order in the acquisition proceedings under the MHAD Act. He has further submitted that the respondents would be put to great prejudice if a decree for eviction is passed, as they will lose their right to pursue their remedy under the MHAD Act and in those circumstances, no fault can be found with the Trial Court having exercised its inherent powers to ensure that no such prejudice is caused to the respondents.

7. Undoubtedly, the question of exercising powers

under section 151 of C.P.C. can arise only in cases where it requires to be exercised for the ends of justice or to prevent the abuse of process of court. Undisputedly, the filing of the suit for eviction of a tenant on the ground specified under the Rent Control Legislation in force in the State cannot be said to be the abuse of process of court nor it is the case of the respondents that by filing the suits in question there has been any abuse of the process of the court by the petitioners. Consequently, there was no occasion for the Trial Court to exercise the inherent powers on the ground of any abuse of process of the court at the instance of the petitioners.

8. As regards the exercise of such powers to meet the ends of justice is concerned, undoubtedly, it is the contention of the respondents that any decree, which may be passed in the suit for eviction of the respondents or any one of them, would result in prejudice to the respondents inasmuch as the person against whom such decree is passed would be precluded from proceeding with the claim to become a member of the proposed cooperative society and to acquire right in the building consequent to acquisition of such building under the MHAD Act. Undoubtedly, it appears that the said argument has weighed heavily in the minds of the courts below while granting the stay of the suits. However, the courts

below has not considered as to whether such an order can result in prejudice to the petitioners. In cases where the court proceeds to exercise the inherent powers under section 151 of C.P.C. to meet the ends of justice, it does not mean that the court has to consider only one side of the matter or that the court can be satisfied after considering the case of one of the parties to the litigation. When it requires to exercise such powers to meet the ends of justice, the court will have to consider the case of both the parties as well as the effect of the order that may be passed in exercise of such powers and to ensure that such order does not result in denial of justice to another party to the litigation or miscarriage of justice. Undoubtedly, the impugned order nowhere discloses any such exercise having been done by the courts below before exercising the powers under section 151 of C.P.C. or confirming the exercise of such powers of the Trial Court.

9. Section 13-B of the MHAD Act and more particularly the explanation clause thereto clearly provides that any proceedings initiated for formation of the cooperative society by the occupiers of the building, in relation to which the suit has been filed either prior to initiation of the proceeding for formation of the cooperative society or thereafter, shall be subject to the result of the suit. In other

words, merely because the tenants initiate the proceedings for the purpose of formation of cooperative society of the occupiers of the building, that would not by itself preclude the landlord from initiating a proceeding for eviction of the tenant if the landlord is entitled to initiate such proceeding in terms of the provisions under the Rent Legislation in force in the State. Undisputedly, the proviso to such explanation further clarifies that in case the proceedings pertaining to the formation of the cooperative society are completed prior to the disposal of the suit, the suit would stand abated. In other words, the conclusion of the proceedings either in relation to the formation of the cooperative society and the acquisition under the MHAD Act or disposal of the suit, whichever happens prior in time, would prevail upon the other. The statutory provision being so clear as regards the rights of the parties who approach for formation of the cooperative society and taking steps for acquisition of the building under the MHAD Act as well as in relation to the suits filed for eviction of a tenant in relation to the same building, there can be no occasion for the civil court to exercise the powers under section 151 of C.P.C. for stay of the suit for the reasons mentioned above unless a clear case for exercise of inherent powers is made out. Once the statutory provision provides for the consequences in relation to the

eventualities, which may arise in the course of the litigation between the parties while proceedings for formation of the cooperative society or necessary action under the MHAD Act are pending, the question of court taking resort to section 151 of C.P.C. to deny the right to the parties to seek redress in a case of alleged wrong disclosed in the plaint does not arise at all and any such exercise by the civil court to stay the suit would not be in judicious exercise of its discretion, but rather an arbitrary exercise of such powers. It is well settled that express provisions of law in a statute would by necessary implication exclude the exercise of inherent powers in regard to that particular Act where specific remedy is provided in accordance with the codified law. It is also well settled that recourse to inherent powers in the face of or in conflict with the specific provisions of a statute is not permissible. Inherent powers cannot be exercised to nullify the effect of any statutory provision. The Apex Court in **Vareed Jacob v/s Sosamma Geevarghese & Ors. reported in (2004) 6 SCC 378** has held that "if there is express provision covering a particular topic, then section 151 of C.P.C. cannot be applied."

10. The learned advocate for the petitioners is also justified in contending that the learned Single Judges of this Court in the cases of Aminchand and Minocher

behramji (supra) have clearly ruled that the court cannot exercise any power under section 151 of C.P.C. in order to stay the suit unless the requisite conditions for stay of the suit under section 10 of C.P.C. are satisfied. In other words, when the specific provisions for stay of the suits as comprised under section 10 of C.P.C. are available, the Court cannot take resort to the inherent powers under section 151 of C.P.C. for the grant of relief of stay of the suits. Undoubtedly, there may be exceptional cases to exercise such inherent powers even in relation to stay of suits, however, in the cases in hand, certainly the same cannot be said to be the exceptional case which warranted exercise of inherent powers when the statutory provisions are sufficiently available to take care of the rights of the litigating parties.

11. Merely because the Apex Court has directed the authorities not to proceed with the acquisition proceedings under the MHAD Act in view of challenge to the statutory provisions under the said Act, it cannot enure to the benefit of the respondents to contend that it will create right in favour of the respondents merely because they have proposed the formation of the cooperative society or an action by the authority under the MHAD Act. Being so, it is apparent that the courts below have exercised the discretion under section 151 of

C.P.C. without addressing itself to the relevant issues in the matter and in a very capricious manner.

12. For the reasons stated above, therefore, the impugned orders cannot be sustained and are liable to be set aside and the application for stay of the suits filed by the respondents are liable to be dismissed.

13. The petitions, therefore, succeed. The impugned orders staying the suit are hereby quashed and set aside and the applications filed by the respondents are hereby dismissed. The Trial Court shall proceed with the suits in accordance with law.

14. Rule is made absolute in above terms with no order as to costs.

15. Mr.Chodankar requests for continuation of the stay for 4 weeks. Once it is held that there is no case for grant of stay of the suits, the question for stay of this order does not arise. Request for stay is rejected.

(R.M.S. KHANDEPARKAR, J.)